

- b. Pedestals or similar above ground appurtenances may be installed on private property only with the express, prior written consent and permission of the affected property owner or his or her authorized agent, or the duly elected or appointed representative of the affected property; provided, however, that such pedestals or above ground appurtenances shall comply with all applicable provisions of the City's Municipal Code.
 - c. Notwithstanding Paragraph b above, pedestals or similar above ground appurtenances may be installed within certain utility easements on private property without the consent or permission of the affected property owner provided that (i) the Grantee is lawfully authorized to use such utility easement pursuant to state or federal law; (ii) no such pedestal or similar above ground appurtenance may be installed unless, at the time of the desired installation, there exists within the utility easement , a similar above ground appurtenance of another utility company or entity; and (iii) the Grantee's pedestal or similar above ground appurtenance shall be located as close as is practicable to said existing above ground appurtenance.
- (2) Vaults. The Grantee shall not install underground vaults on any Public Street or Public Way after the effective date of a Franchise, except in accordance with and pursuant to the provisions of this subsection. All underground vaults shall be flush mounted with the surface of the land area.
- (n) The Grantee shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinances, construction standards, governmental requirements, and FCC technical standards. In addition, the Grantee shall provide the City, upon request, a written report of the results of the Grantee's annual proof of performance tests conducted pursuant to Federal Communications Commission standards and requirements.

Section 15. Use of Public Streets and Public Ways.

- (a) All transmission lines, cables, equipment, structures, and appurtenances of a Grantee's Cable System shall be installed and located in compliance with all applicable local ordinances and so as to cause minimum interference with the rights and reasonable convenience of the City and of private property owners who adjoin any Public Street or Public Way. At all times, transmission lines, cables, equipment, structures, and appurtenances shall be kept and maintained in a safe, adequate, and substantial condition, and in good order and repair.

- (b) A Grantee shall at all times employ reasonable care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, and nuisances to the public. Suitable barricades, flags, lights, signs, flares, or other devices shall be used at such times and places as are required by applicable ordinances and at such additional times and places as are reasonably required for the safety of all members of the public.
- (c) Notwithstanding the requirements of the Pole Attachment Ordinance as referenced in Section 14(i)(1)(a) hereinabove, Any poles or other fixtures placed in any Public Street or Public Way by the Grantee shall be placed in such a manner as to not interfere with the usual travel or other existing or projected uses of the Public Streets or the Public Ways.
- (d) Unless expressly provided otherwise in a Franchise Agreement, a Grantee shall at all times comply with any and all rules and regulations enacted or to be enacted by the City with reference to construction activity in Public Streets or Public Ways, including the requirements of the Pole Attachment Ordinance as referenced in Section 14(i)(1)(a) hereinabove,.
- (e) Erection, removal and common uses of poles:
 - (1) No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the City with regard to location, height, types, and any other pertinent aspect. Furthermore, no location of any pole or wire-holding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the City determines that the public convenience would be enhanced thereby.
 - (2) Where poles or other wire-holding structures already existing for use in serving the City are available for use by the Grantee, but it does not make arrangements for such use, the City may require the Grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable.
 - (3) Where the City or a public utility serving the City desires to make use of the poles or other wire-holding structures of the Grantee, but agreement thereof with the Grantee cannot be reached, the City may require the Grantee to permit such use for such consideration and upon such terms as the City shall determine to be just and reasonable, if the City determines that the use would enhance the public convenience and would not unduly interfere with the Grantee's operations.

- (f) If at any time during the period of the Franchise the City shall elect to alter, or change the grade of any Public Street, Public Ways or utilities, the Grantee, upon reasonable notice by the City, shall promptly remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.
- (g) The Grantee shall not use road cuts for the laying of cable or wires without the prior approval of the City.
- (h) The right of the Grantee to use and occupy the Public Streets or Public Ways shall not be exclusive. The City reserves the right to grant any right or use of such Public Streets or Public Ways to any Person at any time during the term of the Franchise or any other Franchise subsequently granted to any other Person.
- (i) If any Public Street or Public Way or portion thereof used by the Grantee shall be vacated by the City, or the use thereof discontinued by the City or the Grantee, during the term of the Franchise, then the Grantee shall forthwith at its sole cost and expense remove its facilities therefrom unless specifically permitted by the City to continue to use the same and, on the removal thereof, the Grantee shall restore, repair, or reconstruct the Public Street or Public Way area where such removal has occurred to its original condition as required by the City. In the event of any failure, neglect, or refusal by the Grantee, after thirty (30) days written notice from the City to repair, improve, or maintain such Public Street or Public Way, the City may, but shall be under no obligation to, conduct such work, or cause it to be conducted, and the actual cost thereof shall be paid by the Grantee in the time and manner as directed by the City. Collection may be made by resort to the letter of credit or cash security deposit established pursuant to Section 17 of this Ordinance, or by court action, or otherwise.

ATTACHMENT J

C. Permit Applications. Within sixty (60) days of its acceptance of this Agreement, the Franchisee shall file all applications and documents required to obtain all necessary federal, state and local licenses, permits and other authorizations required for the conduct of its business and the construction of the required cable system and shall thereafter pursue all necessary steps to secure such authorizations with

26

due diligence and shall submit monthly reports to the City on the progress of such applications until all such documents are in hand. Such applications shall also include the name and 24-hour telephone number of the Franchisee's supervisor responsible for the permitted construction for cases of emergencies. Any construction permit so required must be accompanied by a set of engineering drawings drawn to a scale such that the following information is clearly depicted:

1. All existing public right-of-ways, easements, alleys, etc., with dimensions for same;

2. All existing public improvements including, but not limited to, streets, curbs and gutters, hydrants, sidewalks, manholes, utility poles, street and traffic control signs;

3. All existing public and private utility systems;

4. All proposed excavation and street openings, sidewalk and/or driveway removals, etc.;

5. All proposed tree trimming; and

6. Proposed locations of all cable facilities in place or to be installed.

B. Permits and Payment of Costs. No construction within the streets, alleys, and other public ways and places of the City shall be commenced until written permits have been obtained from the proper officials of the City. In any permit so issued, such officials may impose any condition, restriction, or regulation that is necessary to ensure continuity in pedestrian and vehicular traffic, and to ensure proper restoration of such public ways and places and any structures located therein.

The rights granted hereunder to use the public ways of the City shall be deemed to be a license only, and shall terminate automatically upon the expiration, revocation, or other termination of this Agreement.

The City agrees to waive all permit fees which would otherwise be required in connection with the Franchisee's construction and installation of its cable system herein enfranchised. In consideration of such waiver, however, the

Franchisee agrees to reimburse the City for all direct costs which the City may incur in reviewing and approving plans required hereunder and in supervising and inspecting the construction and installation of the cable system. "Direct Costs" for the purposes of this paragraph shall include all out-of-pocket expenses for consulting personnel or special equipment as well as direct labor costs and reasonable overhead and fringe benefits for City employees performing such work.

RIGHT OF WAY (ROW) PERMIT APPLICATION

ATTACHMENT K

ENGINEERING OFFICE

Phone 630.377.4486

Fax 630.762.6922



Whereas, I (we)

Contractor / Company Name

Name of Contact Person

Mailing Address

City

State

(_____)_____
Daytime Phone Number

(_____)_____
Fax Number

Bonded with _____, Expiration Date _____,

hereinafter termed the applicant, request permission and authority to do certain work described herein on the Right-of-Way of the St. Charles city **street** known as: _____.

OFFICE USE ONLY

ROW Permit Number _____

This permit hereby authorizes the applicant to perform the construction at the address described above.

The work will be completed in _____ days after the date of this permit.

Authorized Signature: _____

St. Charles City Official

Date

RIGHT OF WAY PERMIT GUIDE

The Right of Way (ROW) includes the street and the area between the sidewalk and the curb (or edge of pavement). ROW construction activities may include: driveway or sidewalk replacement, utility service repair or any public utility construction activities. All construction activities performed by organizations other than the City and within these right of way boundaries require a ROW Permit. There is NO filing fee. Permits automatically expire within (1) one year or as noted above.

1. Before a ROW Permit can be issued, the following documents must be submitted at the time of application:
 - a. **RIGHT OF WAY (ROW) PERMIT APPLICATION.** The contractor needs to fill out this permit (or resident if not using a contractor).
 - b. **PERMIT BOND or PERFORMANCE BOND** in the amount of \$10,000 (City of St. Charles listed as beneficiary). This bond will assure all work is performed in accordance with Chapter 12.30 of the St. Charles Municipal Code. See example attached.
 - c. **CERTIFICATE OF LIABILITY INSURANCE** with special provision listing "City of St. Charles is additional insured". See example attached.
 - d. **NOTE:** If you are using **NON-STANDARD PAVEMENT** such as **BRICK PAVERS** or **STAMPED CONCRETE** the owner is required to complete a Non-Standard Pavement (ROW) Permit Agreement and a Covenant Running with the Land in addition to this ROW Permit Application. These forms can be obtained at the Engineering Office.
2. Applicant will be responsible for contacting J.U.L.I.E. for utility locations (1-800-892-0123).
3. All construction should be in accordance with St. Charles Municipal Code and the Illinois Department of Transportation "Standard Specifications for Road and Bridge Construction" latest edition, and all final "Supplemental Specifications" published as of the date of this permit.
4. All traffic control operations shall be in accordance with the "Illinois Manual on Uniform Traffic Control Devices," the latest Edition.
5. All documents **must** be returned to the Engineering Office (Public Works) and approved before work begins.
6. A Right of Way Permit Number will be assigned and copy of this permit returned to the applicant.

IMPORTANT

**THE ENGINEERING OFFICE MUST BE CONTACTED FOR INSPECTION 24 HOURS IN ADVANCE
BEFORE BITUMINOUS, CONCRETE or NON STANDARD PAVEMENT IS PLACED WITHIN
THE RIGHT OF WAY. THANK YOU! 630.377.4486**

DESIGN REQUIREMENTS

Paver Bricks

1. Placement of paver bricks or stamped concrete require a "Non-Standard Pavement (Right-of-way) Permit Agreement (notarized) and/
2. "Covenant Running with the Land" document, which will include the legal description of the property, parcel number, address, owners signature and must be recorded with the County Recorder's Office prior to construction.

Streets & Roadways

1. Drive Approaches, Bituminous: Bituminous driveways must conform to the following:
 - 2" minimum surface thickness
 - 8" compacted CA-6 stone base
2. Drive Approaches, Concrete: Concrete driveways must conform to the following:
 - 6" minimum thickness
 - 5" compacted CA-6 stone base
 - $\frac{3}{4}$ " expansion joint provided between curb and approach, and sidewalk and approach
3. Drive Approaches, Minimum Dimensions: Driveways may be a maximum of 24' in width and a minimum of 12' in width.

B. Excavation Within Existing Pavement (place under streets and roadways)

1. All base and surface courses must be replaced to match existing. This includes concrete base courses with depths to match existing thickness.
2. Concrete base course shall be pinned to the existing adjacent pavement with the use of $\frac{1}{2}$ " dowels on 18" centers.
3. Any excavation within existing pavement limits shall be complete with the use of flowable fill or CLSM (confined low strength material) up to the pavement section.

C. Temporary Pavement Patch (cold patch is not permitted)

1. Flowable fill shall be placed to match the top of the aggregate base course. The remaining void shall be filled with a temporary concrete patch. A layer of visquene shall be placed in-between the flowable fill and concrete patch to permit removal without disturbance to the flowable fill. The concrete shall be removed and replaced with bituminous material prior to the **next May 1st**.

D. Sidewalk

1. Sidewalks are generally located one (1) foot inside the R.O.W. All sidewalk shall conform to the following:
 - 5' minimum width along collector and major streets
 - 4' minimum width along minor streets and cul-de-sacs
 - Handicapped ramps provided at all locations where the sidewalk abuts a curb
 - $\frac{3}{4}$ " expansion joint provided at 50' intervals
 - troweled contraction joint provided at 5' intervals
 - 3" compacted CA-6 gravel base
 - 5" minimum thickness, 6" at driveway crossings
 - 4% maximum cross slope
 - 0.5% minimum cross slope

E. Saw Cutting Existing Curbs

1. Curb cuts may be completed by removing the "barrier" portion of the existing curb. Approval of this method will be subject to inspection by the Engineering Office and completed at the owner's risk. Excessive spauling after saw cutting might require removal of the existing curb.

F. Traffic Control and Safety

1. Any temporary road closures shall be completed with proper traffic control as mandated by Illinois Department of Transportation (IDOT).
2. The contractor shall coordinate all closures with the City of St. Charles Police Department (630-377-4435).

Bond Example

**XYZ Insurance Company
123 S. 24th Street
Profitsville, IL 60123**

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS:

THAT WE, _____, as
Principal, and XYZ Insurance Company, an Illinois Corporation with principal office at
Profitsville, IL as Surety, are held and firmly bound unto City of St. Charles, IL Public Works
Department, as Obligee, in the sum of Ten Thousand and 00/100 DOLLARS (\$10,000), for the
payment of which sum, well and truly to be made, we bind ourselves, our personal
representatives, successors and assigns, jointly and severally, firmly by these presents.

Dated this _____ day of _____, 2001.

The condition of this obligation is such, that whereas Principal is desirous of obtaining a
license from City of St. Charles, IL Department of Public Works to carry on business as
_____ contractor in City of St. Charles for the term of twelve months or any
shorter period commencing on the _____ day of _____, 2004, and ending on the _____ day
of _____, 2004.

NOW, THEREFORE, if Principal shall during the aforesaid term, faithfully observe and
honestly comply with such Ordinances, Rules and Regulations, and any Amendments thereto,
as require the execution of this bond, then this obligation shall become void and of no effect,
otherwise to be and remain in full force and virtue.

PROVIDED, HOWEVER, that this bond may be continued from year to year by
certificate executed by the Surety hereon.

Principal
By _____

XYZ INSURANCE COMPANY

By _____
Attorney-in-Fact

ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)

PRODUCER

FAX

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED

INSURER A:

INSURER B:

INSURER C:

INSURER D:

INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
GENERAL LIABILITY				
<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY				EACH OCCURRENCE \$
<input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR				FIRE DAMAGE (Any one fire) \$
				MED EXP (Any one person) \$
				PERSONAL & ADV INJURY \$
				GENERAL AGGREGATE \$
				PRODUCTS - COMPROP AGG \$
GEN'L AGGREGATE LIMIT APPLIES PER:				
<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				
AUTOMOBILE LIABILITY				
<input type="checkbox"/> ANY AUTO				COMBINED SINGLE LIMIT (Ea accident) \$
<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per person) \$
<input type="checkbox"/> SCHEDULED AUTOS				BODILY INJURY (Per accident) \$
<input type="checkbox"/> HIRED AUTOS				PROPERTY DAMAGE (Per accident) \$
<input type="checkbox"/> NON-OWNED AUTOS				
GARAGE LIABILITY				
<input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$
				OTHER THAN AUTO ONLY EA ACC \$
				AGG \$
EXCESS LIABILITY				
<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				EACH OCCURRENCE \$
				AGGREGATE \$
<input type="checkbox"/> DEDUCTIBLE				\$
<input type="checkbox"/> RETENTION \$				\$
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				
				WC STATUTORY LIMITS OTHER
				E.L. EACH ACCIDENT \$
				E.L. DISEASE - EA EMPLOYEE \$
				E.L. DISEASE - POLICY LIMIT \$
OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

City of St. Charles is additional insured.

(Must be on certificate)

CERTIFICATE HOLDER

ADDITIONAL INSURED; INSURER LETTER:

CANCELLATION

City of St. Charles
Engineering Department
2 East Main Street
St. Charles IL 60174

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

ATTACHMENT L

Section 10. Rights reserved to the City.

- (a) The City hereby expressly reserves the following rights which shall not be deemed to be waived or abrogated by any Franchise granted pursuant to this Ordinance:
1. To exercise its governmental powers, now or hereafter, to the full extent that such powers may be vested in or granted to the City.
 2. To adopt, in addition to the provisions contained herein, in any Franchise Agreement, and in any existing applicable ordinance, such additional regulations as it shall find necessary in the exercise of its police power. Any conflict between the provisions of a Franchise and any other present or future lawful exercise of the City's police powers affecting the public health, safety, and welfare, shall be resolved in favor of the latter.
 3. To amend this Ordinance or any Franchise Agreement pursuant to Section 9 of this Ordinance, to require reasonable and appropriate modifications in a Grantee's Franchise Agreement of a nature that would not result in effectively terminating same; provided that the City Council shall not make any amendments or modifications to this Ordinance or a Franchise Agreement granted hereunder which would alter the provisions concerning Franchise renewal or revocation contained herein, or which would materially impact the terms and conditions of the Franchise Agreement to the detriment of the Grantee.
 4. To renegotiate the terms of any Franchise granted pursuant to this Ordinance should section(s) of the Ordinance or Franchise Agreement be rendered void by the FCC, or by subsequent changes in applicable federal or state laws.

Section 24. Availability of books and records.

- (a) The Grantee shall fully cooperate in making available at reasonable times, and the City shall have the right to inspect, where reasonably necessary for the enforcement of the Franchise, books, records, maps, plans and other like materials of the Grantee applicable to the Cable System, at any time during normal business hours; provided where volume and convenience necessitate, the Grantee may require inspection to take place on the Grantee premises.
- (b) Where Grantee is unable to locate books or records specific to the Franchise Areas at a local or regional location in the Chicago metropolitan area, Grantee may maintain such books and records at a remote location with the provision that in the event that the City or its designee requests to inspect such records, Grantee shall permit the inspection of such records within fourteen (14) days of such request.
- (c) The following records and/or reports shall be sent to the City, but no more frequently than on a quarterly basis if so mutually agreed upon by the Grantee and the City:
 - (1) A monthly Cable Operations and Service Profile covering the Franchise Area.
 - (2) A report for all temporary Subscriber Drops installed, including "snow drops", which includes the location, date of installation, and date of burial.
 - (3) Periodic preventive maintenance reports.

- (4) Actionable, written Subscriber inquiry/Complaint resolution data and the right to review documentation concerning these inquiries and/or Complaints on an aggregate basis with respect for federal Subscriber privacy legislation periodically.
 - (5) During the reconstruction or upgrading of a substantial portion or all of the Cable System in the City, periodic construction update reports.
- (d) The following records may be reviewed upon request by the City:
- (1) Any copies of FCC Form 395-A (or successor form) or any supplemental forms related to equal opportunity or fair contracting policies; and
 - (2) Any other additional information as the City may reasonably require from time to time provided that such requests pertain to regulatory matters involving the enforcement of this Ordinance, other applicable ordinances of the City, or the Franchise Agreement.

Section 25. Other petitions and applications.

Upon request, copies of all petitions, applications, communications and reports submitted by the Grantee to the Federal Communications Commission, to the Securities and Exchange Commission, or to any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable television operations provided by the Cable System in the Franchise Area, and authorized pursuant to this Ordinance or the Franchise Agreement or received from such agencies shall be provided to the City within fourteen (14) working days of the City's request.

Section 27. Annual Gross Revenues reports.

The Grantee shall, annually within ninety (90) days after the close of the Grantee's fiscal year, prepare in accordance with generally accepted accounting principles (GAAP), and submit to the City, a statement of gross revenues audited by a certified public accountant and covering the Grantee's operations in and relating to the City and the Grantee's Cable System.

Section 30. Periodic testing and compliance with FCC Standards.

- (a) A Grantee shall construct and operate the Cable System to comply with the FCC technical standards as contained in 47 U.S.C. §76, Subpart K of the Commission's rules and regulations, as updated and amended from time to time.
- (b) A Grantee shall perform all tests necessary to determine compliance with the FCC technical standards. Tests shall include, at minimum, proof-of-performance tests required by FCC Rule Section 76.601 (47 U.S.C. §76.601) and such additional or repeat tests involving specific Subscriber terminals as may be required to determine compliance with the FCC technical standards.
- (c) Written records of test results shall be maintained at a Grantee's local office and made available for inspection by the City or other designated agent of the City, upon request of the City.
- (d) The City or other designated agent of the City may monitor and facilitate the enforcement of the FCC technical standards referenced herein in accordance with the *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, Report and Order in CS Docket No. 96-85, FCC 99-57, released March 29, 1999* as directed by the City.

Section 40. Performance evaluation sessions.

- (a) The City Council and the Grantee shall hold performance evaluation meetings within sixty (60) days of the third, fifth, seventh, tenth, and where applicable, twelfth, and fourteenth anniversary dates of the Grantee's award of the Franchise and at such other times as may be required by federal and state law or the terms of a Franchise Agreement. All such evaluation meetings shall be open to the public and transcribed. The City shall notify the Grantee, in writing, at least sixty (60) days in advance of each of the specified performance evaluation meetings. Notice to the public shall be in accordance with the provisions of the Illinois Open Meetings Act.

- (b) Special evaluation sessions may be held at any time during the term of the Franchise at the request of the City or the Grantee.
- (c) All evaluation sessions shall be open to the public and announced by the City in a newspaper of general circulation in accordance with legal notice. The City shall notify its Subscribers of all evaluation meetings, including adjourned meetings, by announcements no less than three (3) times on the Government Access Channel between the hours of 7:00 p.m. and 9:00 p.m. for five (5) consecutive days preceding each meeting.
- (d) Topics which may be discussed at any scheduled or special evaluation session may include, but are not limited to: service rate structures; Franchise Fees, penalties, free or discounted services; application of new technologies; system performance; services provided; programming offered; customer complaints; privacy; amendments to this Ordinance; judicial and FCC rulings; line extension policies; and Grantee or City ordinances or resolutions.
- (e) During a review and evaluation by the City, the Grantee shall fully cooperate with the City and shall provide such information and documents as the City may request to reasonably perform its review.
- (f) If at any time during its review, the City Council determines that reasonable evidence exists of inadequate Cable System performance, it may require the Grantee to perform tests and analysis directed toward the suspected inadequacies. The Grantee shall fully cooperate with the City in performing such testing and shall prepare results and a report if required within thirty (30) days after notice. Such report shall include the following information:
 - (1) The nature of the Complaint or problem which precipitated the special tests;
 - (2) What System component was tested;
 - (3) The equipment used and procedures employed in testing;
 - (4) The method, if any, in which such Complaint or problem was resolved; and
 - (5) Any other information pertinent to said tests and analysis which may be required.

The Council may require the tests to be supervised by a professional engineer to be approved by the Council not on the staff of the Grantee. The engineer shall sign all records of special tests and forward to the Council such records with a report interpreting the results of the test and recommending action to be taken.

- (g) The City's right under Subsection (f) shall be limited to requiring tests, analysis, and reports covering specific subjects and characteristics based on said Complaints or other evidence when and under such circumstances as the Council has reasonable grounds to believe that the Complaints or other evidence require that tests be performed.

Section 42. Forfeiture and termination.

- (a) In addition to all other rights and powers retained by the City under this Ordinance or otherwise, the City reserves the right to terminate the Franchise and all rights and privileges of the Grantee hereunder in the event of a substantial breach of its terms and conditions. A breach by the Grantee shall include, but shall not be limited to the following:
- (1) Failure to complete initial construction or reconstruction, including upgrade, of a Cable System as specified in a Franchise Agreement.
 - (2) Repeated failure, after notice and opportunity to cure, to comply with the material provisions of this Ordinance.
 - (3) Repeated failure, after notice and opportunity to cure, to comply with the material terms of a Franchise Agreement.
 - (4) Repeated failure to cure material violations of the Ordinance or a Franchise Agreement within a reasonable time after notice from the City.
 - (5) Failure to restore service after seventy-two (72) consecutive hours of interrupted service, provided the Grantee's failure to restore system-wide service is not caused by circumstances or events beyond the Grantee's reasonable control.
 - (6) Material fraud or misrepresentation in the application for or negotiation of the Franchise.
 - (7) Repeated failure to pay taxes, Franchise Fees, costs or penalties when and as due the City.
 - (8) Failure to maintain required insurance coverage.
 - (9) Insolvency or bankruptcy of the Grantee.
 - (10) Transfer of the Franchise without City Council consent pursuant to Section 35 of this Ordinance

- (11) The Grantee abandons the Franchise. The Grantee shall be deemed to have abandoned its Franchise if it willfully refuses or is unable to operate the Cable System as granted by a Franchise Agreement pursuant to this Ordinance where there is no event beyond the Grantee's control that prevents the operation of the Cable System, and where operation would not endanger the health or safety of the public or property.
- (12) The Grantee unreasonably refuses to provide Subscribers service insofar as their financial and other obligations to the Grantee are honored.
- (b) Notice of substantial breach: Written notice shall be given to the Grantee setting forth:
 - (1) The nature of the substantial breach or default by the Grantee;
 - (2) A written demand that the Grantee correct the violation;
 - (3) Notice that any failure to correct the remedy, the substantial breach, or default within thirty (30) days, or other such period as may be stipulated in a Franchise Agreement or as the parties may agree, may be cause for revocation of the Franchise.
- (c) Answer to notice of breach: Within thirty (30) days after the City's written notice to the Grantee, the Grantee shall respond in writing to the City, together with documentation in support of its response:
 - (1) That it contests the City's notice of substantial breach and requests an opportunity to be heard as provided herein;
 - (2) That corrective action has been implemented by the Grantee and the substantial breach or default has been cured;
 - (3) That corrective action has been implemented by the Grantee and is being actively and diligently pursued in accordance with a written corrective action plan to be submitted to the City.
- (d) Determination: The City Council shall determine, at a public meeting with Grantee having the opportunity to be present and heard, whether or not a substantial breach or default by the Grantee has occurred, whether it has been cured, or a satisfactory corrective action plan has been submitted and is being actively and diligently pursued and whether cause exists to revoke the Franchise or impose a lesser sanction. In the event that the City determines that it has cause to revoke the Franchise, it shall send notice of revocation to the Grantee within ten (10) business days of the City's determination. The City shall not exercise any right without a resolution approved by the City Council.

- (e) Judicial Relief: No provision of this Section shall be deemed to delay, bar, or otherwise limit the right of the City to seek or obtain judicial relief to enforce the provisions of this Ordinance or a Franchise Agreement.
- (f) In the event Grantee continues operation of all or any part of the Cable System beyond the revocation or expiration of the Franchise Agreement, Grantee shall pay to the City the compensation set forth in Section 26(g) hereinabove at the rate in effect at the time of such revocation or expiration, and in the manner set forth herein, together with any taxes it would have been required to pay had its operation been duly authorized in addition to any damages or other relief to which the City may be entitled in Section 43 hereinbelow.

Section 43. Penalties.

A Grantee shall comply with the requirements of this Ordinance and the Franchise Agreement at all times during the term of its Franchise. If the City has reason to believe that a Grantee has committed a certain violation of this Ordinance or the Franchise Agreement, the City may act to remedy the violation.

- (a) Remedies retained. No provision of this Ordinance shall be deemed to bar or otherwise limit the right of the City to seek or obtain judicial relief from a violation of any provision of the Franchise, or any rule, regulation, requirement, or directive promulgated thereunder. Neither the existence of other remedies identified in this Ordinance nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages, except where liquidated damages are otherwise prescribed, for such violation by the Grantee, or judicial enforcement of the Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy available contractually, at law, or in equity.
- (b) Fine imposed: Unless otherwise provided, any Person convicted of violating any provision of this Ordinance or any rule or regulation promulgated hereunder shall, upon conviction, be subject to a fine not to exceed seven hundred fifty dollars (\$750.00) and costs for each offense. Each day of a continuing violation shall constitute a separate and distinct offense.
- (c) Liquidated damages: A Franchise Agreement shall include provisions for liquidated damages to be paid by the Grantee in amounts set forth in the Franchise Agreement and chargeable to a security fund.
- (d) Violation procedures:
 - (1) Notice of violations: Written notice shall be given to a Grantee setting forth the nature of the violation and a reasonable period of time for a Grantee to correct the violation. Unless the City determined that the violation is of such a nature that a lesser period of time is warranted for remedying the violation, a Grantee shall be given thirty (30) days after receipt of such notice to remedy the violation.

- (2) Answer to notice of violations: Within thirty (30) days, or other such period of time specified by the City in its notice to a Grantee, a Grantee shall respond in writing to the City:
- a. That it contests the City's notice of violation and requests an opportunity to be heard as provided herein. A Grantee shall submit supporting documentation with its response to the notice.
 - b. That it contests the City's notice of violation for the reasons that the violation was beyond the reasonable control of the Grantee and requests an opportunity to be heard as provided herein. A Grantee shall submit supporting documentation with its response to the notice.
 - c. That the Grantee will remedy the violation within the time specified by the City in its notice to the Grantee.
 - d. If a Grantee contends that an extended period of time is reasonably needed to remedy the violation, it shall submit a written request for an extension, together with supporting documentation that a Grantee cannot reasonably remedy the violation within the time specified by the City in its notice to a Grantee. The City shall not unreasonably deny an extension of time to remedy the violation. If the City grants the extension, a Grantee shall proceed to remedy the violation within the extended time period prescribed, provided that a Grantee also informs the City on a regular basis of the steps being taken to remedy the violation.
- (3) Opportunity to be heard: The City shall give a Grantee not less than fourteen (14) days written notice of the date, time, and place of the public meeting to be held before the City Council. The Grantee shall be entitled to the right to present evidence and the right to be represented by counsel. At the public meeting, the City Council shall hear and determine the issues and render its findings and decision.
- (4) Determination: If the Grantee fails to submit a written response to the City's notice of violation as provided in Subsection (2) hereinabove, or if a Grantee fails to remedy the violation within the time period specified by the City in its notice to a Grantee, or any extensions granted thereto by the City, or if the City Council is persuaded after a Grantee's opportunity to be heard in a public meeting that a Grantee has committed a violation as provided herein, the City Council may, after giving a Grantee an opportunity to be heard:
- a. Order a Grantee to remedy the violation within a reasonable period of time specified by the City Council.

- b. Assess liquidated damages against a Grantee in accordance with a Franchise Agreement and to exercise any other remedy provided in this Ordinance or the Franchise Agreement.
 - c. Impose any lesser sanction permitted by a Franchise Agreement.
- (5) Judicial relief: No provision of this Section shall be deemed to bar or otherwise limit the right of the Franchising Authority to seek or obtain judicial relief to enforce the provisions of this Ordinance.

Section 48. Notice to comply.

- (a) Compliance periods: Unless otherwise stated in this Ordinance or a Franchise Agreement, the Grantee shall comply with the terms and conditions of the Ordinance or the Franchise Agreement with respect to compliance periods.
- (b) Designation of agent for notification: A Grantee shall designate a Person within its management structure who shall have the authority to receive and respond to notifications sent by the Franchising Authority of Franchise violations, Subscriber complaints, or other concerns relating to the Franchise.
- (c) Continuing obligation: Subject to the provisions of this Ordinance, a Grantee shall not be relieved of its obligations to comply with any of the rules, regulations, or directives as stated in this Ordinance or the Franchise Agreement by reason of any failure of the City, or its officers, agents, or employees to enforce prompt compliance, nor shall such be considered a waiver thereof.

Section 54. Rights and remedies.

In the event of a violation or an alleged violation of the Franchise by the Grantee, the City, by suit, action, mandamus, or other proceeding, in law or in equity, may enforce or compel the performance of the terms of the Franchise to the full allowable extent. In the event of a judicial proceeding, the prevailing party shall be entitled to reimbursement of all costs and expenses, including reasonable attorneys fees, incurred in connection with such judicial proceeding.